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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

BENJAMIN BARBER,

Case No.3:2016cv02105

Plaintiff,

Memorandum in Support of Claim 3

vs.

**ELLEN ROSENBLUM, KATE BROWN,
BEN CANNON, BRAD AVAKIAN in their
official capacity (for claim #3 only)**

(Civil Rights) 42 USC 1983, First Amendment,
Fourteenth Amendment, 42 USC 1981,
42 USC 1985, 42 USC 2000(c),
42 USC 2000(d), 38 USC 1681

Defendants

Table of Contents

2	(I) Facts
5	(II) Claims
7	(a) History of critical theory
9	(b) Critical Theory as Applied
11	(c) Establishment Clause
13	(III) Relief Sought
14	(IV) Legal Principles Applied
14	(a) Discrimination
19	(b) The First Amendment
21	(c) Establishment Clause
21	(i) Religion Defined
25	(ii) Lemon Test
26	(iii) Secular Purpose Prong
27	(iv) Effect Prong
28	(v) Entanglement Prong

(I) Facts

1. It is the plaintiffs positions that Civil Rights resides with and is to protect individuals, the protections of civil rights under the law are not “privileges” as various state entities would believe, they should not portray them as unjust privileges in order to create animus between peoples, nor justify revoking them in order to discriminate against people on the basis of of a suspect classification.

2. The Oregon State Higher Education Coordinating Commission as a matter of policy and under the color of law mandates an equity policy¹ which violates the equal protection clause of the 14th amendment to the constitution. Moreover the Commission contrary to their own policies promote increasing inequities by providing discriminatory benefits for women who are overrepresented.²

3. The State of Oregon introduced SB 97 that mandates “cultural competency continuing education” by Oregon Health Authority,³ which it sought to use to end disparities in health care in minorities. Which is contends are based on cultural competence of health care providers, rather than competence of certain cultures, or the genetic aspects that have an impact on health care outcomes.

4. These concepts are based on a social construction of race and “critical theory” which are inherently biased and discriminatory,⁴ and depart from the Association of American Medical Colleges, which broadly attempt to understand the beliefs, practices and needs of different patients.⁵

5. During the 2013 legislative session, House Bill (HB) 2611 passed into law. This law creates requirements for OHA, through OEI, to provide resources and support for improving the cultural competence of regulated health care professionals in Oregon and to report to the Oregon Legislative Assembly about the level of participation in CCCE among these professionals.⁶

6. The Oregon Legislature in 2013 passed HB 3233 was granted “to school districts, nonprofit organizations and post-secondary institutions for the purpose of closing achievement gaps by providing and improving effectiveness of professional development, implementing data-driven decision making, supporting practice communities and implementing culturally competent practices”.⁷

7. The Oregon Department of Education stated “All educators must be prepared to effectively address issues of social justice, institutional racism, and privilege, and to embed culturally responsive

1 HECC-AA-DI-Plan-2017-19-final.pdf

2 STEM-Education-Plan-Final_CEdO_Nov_2016.pdf

3 Oregon House kills bill studying cultural competency training for health professionals _ OregonLive.pdf

4 Final-CCCEC-Report-only-2013.pdf

5 culturalcompd.pdf

6 Office of Equity and Inclusion Cultural Competence Continuing Education (CCCE)_ HB 2611 (2013).pdf

7 Culturally Responsive Pedagogy and Practices - Oregon Department of Education.pdf

curriculum into their lesson planning and discussions. This is critical in Oregon, especially in light of disparity gaps related to discipline, achievement, attendance, and other student measures.”⁸

8. In 2015 the Oregon Board of Higher Education transitioned from a mostly activity funding model to a mostly outcomes funding model, whereby the colleges and universities were given weighted funding for certain outcomes, for example people who were in underrepresented minority groups are given more funding, in addition to activities meant to support individualized retention efforts.⁹

9. The Oregon Legislature In December 2015 passed HB 3308 to address a “underrepresented student achievement gap” and to address the disparities of education among certain groups. It “began with students from marginalized communities” as a “way to address the need for Cultural Competency” because students complained of “experiences a host of micro-aggression in the classroom”.¹⁰

10. The Oregon Legislature is now considering a mandatory “cultural competency oversight committee” for all university and community colleges, which is designed to rate each staff member by their ‘diversity’, and instead of a non-discriminatory mandates it requires a “cultural competency” and “cultural fluency”, and would also compels individuals and faculty with an official speech code.

11. The Oregon State Higher Education Coordinating Commission does not include men in its groups of “underrepresented students” despite ample evidence they are from enrollment figures.¹¹ It uses it to allocate resources to people by race, “PCC applies racially conscious systems of analysis, including Critical Race Theory, to examine and dismantle systems of inequality at the College.”¹²

12. In the course of teaching “critical race theory” the PCC held a “Whiteness history month”, in addition to try to redefine the terms “racism” and “sexism” non neutrally, so that it applies only to men or only to white people¹³, Its “Whiteness History Month Project, unlike heritage months, is not a celebratory endeavor“, its purpose is in “dismantling whiteness” and “systems of oppression”.¹⁴

13. Portland Community College diversity counsel admits to implementing critical race theory training and frame works for the entire college community.¹⁵ This goes to the point of reviewing all board actions, every policy and procedure, staff behaviors, and apply a score card based on their performance. Its works without transparency or accountability to the staff or students for decisions.

8 EducatorEquityReport_CEdO_July_2016.pdf

9 7.2 b. Rule Text 715-013-0040.pdf

10 HB3308-Final-Report-Jun-16.pdf

11 Oregon Local News - Boys still lag behind girls in graduation, and no one talks about it.pdf

12 dlldc-action-plan 2017-2018.pdf

13 Diversity Definitions _ PCC.pdf

14 Whiteness History Month Discussion PCC.pdf

15 PCC strategic-plan.pdf

14. PCC also has 4 Women Resource Centers, as well as 4 multicultural centers, while having none available to men, despite having been asked to produce one by its Dean of Students. These centers offer students 1:1 mentoring and assistance, they provide jobs¹⁶ for advocate students at the school, and hold advocacy events for people who are women or multicultural (something other than white).

15. Barber had sent a message to PCC indicating that he found discriminatory the use of a heritage month that targeted his race, but unlike the ones applied to the other races did not include anything to be positive about, when in fact it was white people who started the human rights movement and who dismantled the international slave trade which was had occurred around the world.¹⁷

16. Barber was informed that Whiteness history was not discriminatory in nature, afterwards he notified the college that they created a scholarship in his degree program discriminated against him on the basis of gender and race,¹⁸ and that it too as a form of discrimination against him by the college, and that the college failed to use strict scrutiny which is constitutional requirement in his state.

17. PCC informed him that it was not unlawful discrimination because it sought to assist women and minorities who were under represented in that field, at which point he requested that there be a mens studies course because the women's studies program was the reason why there was an underrepresented amount of men in the gender studies program due to their approach.

18. Defendant Vance attended the Lewis and Clark community counseling clinic as a result of her increasingly instable state, which included her self harming and suicidal idealization and physical abuse. She had also been abusing her prescription drugs in addition to drugs and alcohol, which she had been told that she was not supposed to mix together, which is why Barber demanded she get treatment.

19. Barber attended Lewis and Clark colleges Counseling Psychology with the Defendant Vance and despite the fact that Vance had admitted that she was the physical and emotional abuser, he was confronted with feminist and liberation psychology literature based on critical theory and feminism, specifically the "circle of power and control" including "white privilege" and "male privilege".¹⁹

20. Barber informed his counselor that the handouts that they had provided were not at all relevant to the problems that had been occurring, and were in fact unlawful discrimination against his gender, and then inquired how much the therapist understood about the words "power" and "liberty", and recited the "liberty as a triadic relation" to indicate that liberties are interrelated.²⁰

16 WRC_Advocate_Application.pdf

17 PCC-NonDiscrimination.pdf

18 NSF Award Search_Award#1643624 - Mentoring in Manufacturing Technology.pdf

19 Power and control wheel.pdf

20 Positive and Negative Liberty (Stanford Encyclopedia of Philosophy).pdf

21. In the course of Lewis and Clark applying its “critical social theory” Lewis and Clark’s Marriage and family therapy program teaches “patriarchy” and “oppression”. However their assumptions on “power and privilege” mean “it is not possible for the therapist to be neutral” and “This would leave therapists forced to choose between conflicting ethical principles”.²¹

22. Reliance on the gender paradigm known as the “Duluth model” for domestic violence ignores the gender symmetry in domestic violence.²² Studies of professional psychologists rate have shown that psychologists, irrespective of demographics, rate a hypothetical husband’s behavior as more likely to be psychologically abusive and more severe in nature than the wife’s use of the same actions²³.

23. In October 2014 Barber attended a training program by Lewis and Clark called the “liberation based healing conference, where the Dean held a talk “unsettling whitestream pedagogy of knowledge students, professionals and educators”²⁴ and held native American healing rituals for the attendants, and passed out “white privilege” advertisements which were sponsored in by Portland State University.²⁵

(II) Claims

24. The graduation rates in Oregon’s education system have been among the lowest, both in K-12 and also in Higher education, what most states do when individuals have issues in education is to establish an individualized education or support plan for those individuals, however instead Oregon seems fixated on a racist and sexist education plan, on the reasoning that they a contributing factor.

25. The state of Oregon has applied sexual and gender criteria for federal funding, in addition to the provisioning of resource centers, and the establishment of official gender and racial ideologies. Which is prohibited under a strict scrutiny standard under the Oregon Constitution, and is prohibited by federal law from discriminating on the basis of gender and race in federally assisted programs.

26. While there is no doubt that some people need cultural or biological needs, for example esl classes or translation services, abortion services, it is however not legal to create quota or funding system on a persons race or gender, nor create advocacy systems the exclude people based on them.

27. Nor can the state establish an official ideology based on conflict, critical theory, or privilege theory. The central problem with these theories is the a priori reasoning, and the application of political theories which stereotype individual people, are inherently suspect classification that discriminate against the classes, and cause disparate treatment rather than the solve the cause of disparate impact.

21 Teresa McDowell Applying Critical Social Theories to Family Therapy Practice.pdf

22 Dutton-D.G.-Corvo-K.-2007-The-Duluth-Program_-A-flawed-and-data-impervious-paradigm.pdf

23 follingstad abuse men vs women.pdf

24 Unsettling whiteness Lewis and Clark.pdf

25 Liberation based healing sponsors.pdf

28. “critical theories” were developed by the Frankfurt School as a response to the failures of Marxist “conflict theory” to develop a revolution of the proletariat, which they believe that “social structures are created through conflict between people with differing interests and resources”.²⁶

29. These “critical theories” are methods by neo-marxists to destroy the “cultural hegemony”, meaning the beliefs, explanations, perceptions, values, and mores of society, that built a capitalistic social structure, by the belief that they are social constructs of the ruling class that benefit capitalism.²⁷

30. To do so they promote a “passive revolution” through “a long march through the institutions”, like education, language, religion, and media. They do this through advocacy groups like the cultural studies departments in education, as well as a method of education called “critical pedagogy”.

31. Critical pedagogy is created by Pablo Fiere who wrote “pedagogy of the oppressed”, he used it for educating people in communist revolutionary politics,²⁸ people who formed a peasant army along with racial undertones due to a past history of colonialism and slavery, that revolution also facilitated an economic catastrophe that nearly started a civil war over socializing private property of individuals.

32. These advocacy groups promote research with a selection bias towards finding its own justification, through its inherent incentives to create conflict in society based on projection of oppression, which they purport to solve with an utopian idealism of what they term social justice.²⁹

33. These special interests come at the cost of the interests of the “conspicuous and unprotected” groups, who its proponents say have a privilege or unearned benefit based on class and who don’t deserve an equal protection rights, and who they seek to dis-empower to create equity among classes.

34. As much as feminism would claim to support equality among the sexes, a person would be hard pressed to find one who would support mens liberation from women, in the form of reproductive choice to abort their parental obligation, or discourage women from hypergamy or ‘marrying up’.

35. Their “critical race theory” encourages discrimination on the basis of race,^{30 31} like the association between “whiteness” and capitalism, and similar to the association between the Jewish and capitalism, as was used in the book “On the Jewish Question” by Karl Marx³². It was a “social justice” and “equality” movement identifying an “oppressor” class that allowed for the persecution of Jews.³³

26 Conflict theories.pdf

27 Cultural hegemony.pdf

28 Critical Pedagogy.pdf

29 Cultural responsive EOU.pdf

30 Critical Race Theory.pdf

31 Discrimination in the laboratory A metaanalysis of economics experiments.pdf

32 On The Jewish Question by Karl Marx

33 Völkisch equality.pdf

36. Moreover critical theories reject science as a social construct, being that some knowledge is disseminated by the privileged, so need a 'critical pedagogy' and in fact derive "other ways of knowing" like feminist epistemology. These are often absent of the scientific method and rely heavily on sophistry, and are often directly opposed to what the mainstream consensus on words and science.

37. The further from scientific and secular these advocacies become and the more they excessively entangle the government, the more they take on a government endorsement of a particular persons race, and even government indoctrination on behalf of a specific type of racist or sexist ideology.³⁴

(a) History of critical theory

38. Critical Theory was developed from Karl Marx's Conflict Theory, and the Cultural Hegemony Theory of Antonio Gramsci, which Max Horkheimer developed at 1930 as the director of the Frankfurt School Institute of Social Research in Germany and later at Columbia University 1934. he defined critical theory In his 1937 essay Traditional and Critical Theory.

39. Critical theory is a social theory oriented toward critiquing and changing society as a whole, in contrast to traditional theory oriented only to understanding or explaining it. Horkheimer wanted to distinguish critical theory as a radical, emancipatory form of Marxian theory, critiquing both the model of science put forward by logical positivism and what he and his colleagues saw as the covert positivism and authoritarianism of orthodox Marxism and Communism.³⁵

40. Antonio Gramsci wrote "Socialism is precisely the religion that must overwhelm Christianity ... In the new order, Socialism will triumph by first capturing the culture via infiltration of schools, universities, churches and the media by transforming the consciousness of society ..."³⁶

41. Alluding to Marx's theory of religion as the opium of the masses, he describes "An underground current of romance and popular fantasies, fueled by the cult of science, the religion of progress, and the optimism of the nineteenth century, which is itself a form form of opium." based on utopianism.

42. In his critique religion and capitalism as a civic religion he states, "This isn't to say that Utopia cannot have a philosophical value, for it has a political value and every politics is implicitly a philosophy, even if disconnected and crudely sketched. In this sense religion is the most gigantic Utopia, that is the most gigantic "meta-physics", that history has ever known, since it is the most grandiose attempt to reconcile, in mythological form, the real contradictions of historical life."

34 Men and Women evo psychology.pdf

35 Critical Theory.pdf

36 gramsci-reader.pdf

43. Similarly in a core text.³⁷ of critical theory “enlightenment as mass deception” written by Adorno and Horkheimer, it almost precisely describes the modern methods of critical theory analysis, when they wrote of Nazi and soviet racism in the book. The advocates who push these theories make efforts similar to them, as they are actually described to be a part of the “culture industry” in the book.

44. From the chapter on “elements of antisemitism”; “Anti-Semitism as a popular movement has always been driven by the urge of which its instigators accuse the social democrats: to make everyone the same. Those without the power to command must fare no better than ordinary people.”

45. “The real benefit it brought was a half understood ideology. That the demonstration of its economic futility heightened rather than moderated the attraction of the racialist panacea points to its true nature: it does not help human beings but assuages their urge to destroy. The actual advantage enjoyed by the racialist comrade is that his rage will be sanctioned by the collective.”

46. “Its usefulness for the rulers is evident. It serves as a distraction, a cheap means of corruption, a terrorist warning. The respectable rackets condone it, the disreputable ones carry it out.” “If a malady so deeply embedded in civilization is not properly accounted for by knowledge, the individual, too though he may be as well intentioned as the victim himself, cannot mitigate it through understanding.”

47. “Rage is vented on those who are both conspicuous and unprotected. And just as, depending on the constellation, the victims are interchangeable: vagrants, Jews, Protestants, Catholics, so each of them can replace the murderer, in the same blind lust for killing, as soon as he feels the power of representing the norm.” These behaviors are similar to the modern day social justice advocates.

48. Pablo Friere also stated that this would be the case in “pedagogy of the oppressed” “But almost always, during the initial stage of the struggle, the oppressed, instead of striving for liberation, tend themselves to be come oppressors, or “sub-oppressors.” The very structure of their thought has been conditioned by the contradictions of the concrete, existential situation by which they were shaped.”³⁸

49. This pattern of behavior is known as “Karpman's Drama Triangle”, “Initially, a drama triangle arises when a person takes on the role of a victim or persecutor. This person then feels the need to enlist other players into the conflict. As often happens, a rescuer is encouraged to enter the situation”.³⁹

50. “The relationship between the victim and the rescuer can be one of codependency. The rescuer keeps the victim dependent on them by encouraging their victim-hood. The victim gets their needs met

37 Horkheimer Max Adorno Theodor Dialectic of Enlightenment Philosophical Fragments.pdf

38 pedagogy of the oppressed.pdf

39 Karpman drama triangle.pdf

by having the rescuer take care of them.” “Each triangle has a payoff for those playing it. The antithesis of a drama triangle lies in discovering how to deprive the actors of their payoff.”

51. Any “social justice” which serves only the “oppressed”, implies it is something other than justice, therefore it must be injustice justified by society. John Rawls who popularized the term published “Justice as Fairness: A Restatement” dismayed by its use to deny equal basic liberties. The United Nations said so itself when it wrote its paper called “social justice in an open world”.

52. The United Nations wrote:⁴⁰ “Arguments founded on moral fairness are easily disposed of in an atmosphere of moral relativism and cultural pluralism. Present day believers in an absolute truth identified with virtue and justice are neither willing nor desirable companions for the defenders of social justice.” Which defines itself social justice as being incompatible with equal justice principals.

(b)Critical Theory as Applied.

53. Despite the fact that women make up the majority of Higher Education, the proposals to the Higher Education Coordinating Committee to solve the “student achievement gap” of women in the STEM fields, would be to require that womens studies be made mandatory for STEM grads, which doesn’t improve STEM skills but rather bias STEM towards a women studies degree.⁴¹

54. A logical and systemic attempt at equity would also prevent PCC from providing gender specific federally funded educational grants, when in fact there are less men attending its community college than women, a concern PCC’s Dean of Student development had when she made her report.⁴²

55. She wrote: "Overall there has been concern that fewer men are enrolling in higher education and that they are more at risk then their female counterparts when they do enroll." also "26 of our scholarships have criteria limiting them to women students. 18 of our scholarships are in fields traditionally dominated by women 55 of our scholarships are in fields traditionally dominated by men"

56. “At our own college the ratio of male to female students is 44.1% to 55.9%. The gap is even bigger as we look at national community college comparisons, 39% to 61%. At PCC, fewer men are applying for foundation scholarships and receiving financial aid. Retention rates and discrepancies are particularly troubling for men attending PCC on a half time or part-time basis.”

57. It continues “Some white men do face real difficulties. A study by King⁴³ for the American Council on Education suggest that low income white male high school students are less likely to enter

40 Social Justice United Nations.pdf

41 HB3308-Final-Report-Jun-16.pdf

42 Community College Programs for Men.pdf

43 Gender-Equity-in-Higher-Education-2006.pdf

college than all low income female high school students and less likely to enter college than their low income African- American, Hispanic and Asian American male peers.”

58. However despite that she and John Gieber had both asked for a men’s resource center similar to the womens resource center being offered, at an advisory committee where the leader remarked “the rest of the campus is the men’s resource center”⁴⁴, and no men’s resource center was ever established.

59. For Lewis and Clark’s counseling psychology department Cultural competency⁴⁵ is “Critical theory which published “Class and classism in family therapy praxis: A feminist, neo-Marxist approach”, and “applying critical social theories to family therapy practice”, their practices rely on the “cultural context” of class, race, and gender as they define, rather than an individuals states of mind.

60. Lewis & Clark’s Dean of Counseling Psychology writes “The aim of critical social theorists is to critique and influence the direction of modernity, i.e., systematic attempts to discover universal truths through scientific methods and Western oriented logic. While postmodernists question modernity itself, critical theorists question the failings of modernity to create a just society.”⁴⁶

61. Lewis and Clark uses “liberation psychology” and “the duluth model” which is empirically invalidated and diametrically opposite to “cognitive behavior therapy”⁴⁷, because the former emphasizes hypervigilism, subjective truths, and perceiving any potential slight as a microaggression, while the latter teaches to identify irrational and dysfunctional thinking in groups and persons.⁴⁸

62. “Liberation Based Healing” is based upon “liberation psychology”⁴⁹ also shares roots in the wider movement of Latin American critical and liberatory praxis (especially Theory of Dependency, Liberation Philosophy, Liberation Theology, Critical or Popular Pedagogy), and originated from the South American Jesuit church along with critical pedagogy as forms of neo-marxism.

63. In a psychotherapeutic context, this removes the onus of psychological distress solely from the individual and their immediate circumstances, and reframes the origin of distress as the environment and social structure to which persons are subjugated, liberation psychology seeks to re situate the psychologist as part of the emancipatory process for and with oppressed communities.⁵⁰

44 The “Whiteness” Name Reveals a Major Problem _ The Bridge.pdf

45 Psychotherapy_Networker_Cultural_Equity-libre.pdf

46 Teresa McDowell Applying Critical Social Theories to Family Therapy Practice.pdf

47 Rational emotive behavior therapy.pdf

48 Beahrs Traumatophobia: Paradoxical Amplification of Posttraumatic Symptoms, and the Role of Third Parties .pdf

49 Coming in From the Cold_ Liberation Psychology for Counselors and Educators - Continuing Education - Graduate School of Education and Counseling - Lewis & Clark.pdf

50 Liberation psychology.pdf

(c) Establishment Clause

64. The state of Oregon government is prohibited from the establishment any religion or even moral philosophies like secular humanism, and critical pedagogy by Fiere is often referred to as “radical humanism”⁵¹ which like “radical feminism” or even marxism is a method of analysis used to arrive at ends that pertain to a desired state of human nature which to some hold a religious devotion.

65. Secular religions exist and are defined when they promote concepts of “ultimate reality” and “ultimate concern” that occupies a place parallel to deistic religions in persons lives like secular humanism. A states cannot establish feminism or critical race theory any more than it could establish a arayanism as a compelling state interest, because it restricts a persons free exercise beliefs themselves.

66. The State may offer courses on black history or women studies, but it cannot not establish belief there exists a “two-spirit” gendered individuals, or that “race is a social construct” when DNA tests can accurately determine race, or that the civil rights enjoyed by rights are actually “privileges”, create a policy and based on belief and sanction for disbelief, create a hostile environment, or unequal benefits.

67. When the state of Oregon unnecessarily entangles itself with a moral philosophy it coerces the freedom of thought, when the state infringes or coerces free speech with its bias and inquiry even if it maintains a secular purpose, it violates the first amendment rights through the establishment clause.

68. These groups advocating these theories have sincerely held beliefs, which lead them to disbelieve scientific method and epistemology, which they substitute with “feminist epistemology” that abandons falsification and repeatability. Some feminists have even gone so far as to portray “women studies as a virus” and “as an infectious, insurrectionist, and potentially dangerous, field of study”.⁵²

69. For example \$406,000 of National Science Foundation grants were used by University of Oregon to study⁵³ “Glaciers, gender, and science: A feminist glaciology framework for global environmental change research” containing no science and only metaphoric gender politics of glaciers.

70. For an example a observing “Structures of power and domination also stimulated the first large-scale ice core drilling projects these archetypal masculinist projects to literally penetrate glaciers and extract for measurement and exploitation the ice in Greenland and Antarctica.”⁵⁴

71. If race and gender are merely social constructs as asserted, then there is no basis for disparate treatment. Couldn’t I sincerely hold the belief I am a trans-hispanic jew justifying the underrepresented minority benefits, or could I believe female hypergamy and the matriarchy as oppressive to men?

51 pedagogy of the oppressed.pdf

52 womens studies as a virus.pdf

53 Postmodern Glacier professor defends his dreadful study as “misunderstood”. It wasn’t.pdf

54 Feminist Glaciology.pdf

72. Due to the “Discriminatory Harassment” policies employed by PCC, holding a sign on campus regarding “the matriarchy”, would result in an “offensive working environment” requiring discipline.⁵⁵ However programs "Toxic Masculinity, White Supremacy, and the Mass Shooter" are permissible.

73. Profesor Michael Trigoboff for example was subjected to 5 “bias incident” reports as a direct result of him discussing his opposition to “whiteness history month” on the campus list-serv and community discussion page.⁵⁶ Other professors who also opposed it but who were afraid to speak up regarding it,⁵⁷ and even people who wanted to join the committee were denied based on viewpoint.

74. A very good example of a growing use of ideological litmus tests in Oregon was written in a paper by the National Association of Scholars, their Oregon Association of Scholars subdivision wrote a paper entitled. “The Imposition of Diversity Statements on Faculty Hiring and Promotion at Oregon Universities “, which contains a serious study regarding its use within the Oregon University System.⁵⁸

75. Oregon colleges and universities have begun to impose requirements for prospective and current faculty to show their commitment to the partisan ideology of “diversity, equity, and inclusion”. This is only one part of a bigger push to impose a partisan ideology onto higher education in the state, but its threat to academic freedom and research excellence is acute.

76. While in theory, these terms can be defined in ways consistent with a variety of political perspectives, in practice Oregon universities have defined them in strongly partisan ways. As these new ideological litmus tests spread throughout the state, faculty will spend more time signaling their zealous support and making sure not to challenge students in ways that might be construed as a threat to this ideology.

77. “Diversity statements are only a small part of the attempt to reconfigure higher education based on a partisan ideology of social engineering. Universities today, including all major colleges and universities in Oregon, are pouring millions of dollars each year into “diversity training”, “diversity action plans”, and “diversity councils” even as student tuition rises. Diversity statements are unique insofar as they represent a clear and imminent threat to academic freedom and research excellence, although the more corrosive and insidious effects of the broader diversity agenda should not be ignored.”

55 Nondiscrimination & Non-harassment Policy _ PCC.pdf

56 Whiteness History Month Discussion PCC.pdf

57 The “Whiteness” Name Reveals a Major Problem _ The Bridge.pdf

58 DiversityStatements_Rev16Mar17.pdf

78. “As such, diversity statements are a de facto tool to weed out non-left wing scholars.⁵⁹ In an essay widely cited by university administrators as a model of good advice, a former anthropology professor at the University of Oregon wrote that her diversity statement would include discussions of “how to keep the white students from dominating all classroom discussions”, how not to “thoughtlessly reproduce the standard white and Western model of legitimate knowledge”, and how to “reflect a commitment to queer visibility.”

79. “The alarming shift of university faculties towards highly-skewed left-wing political viewpoints, where centrists and conservatives have become endangered species, has deleterious effects on educational quality, as a growing body of literature attests. The imposition of “diversity statements” will make this situation worse not better. As the former Provost of Stanford University, John Etchemendy, told the university’s trustees in February 2017: “The university is not a megaphone to amplify this or that political view, and when it does it violates a core mission. Universities must remain open forums for contentious debate, and they cannot do so while officially espousing one side of that debate.”

80. The separation of powers prohibits the courts a taking legislative powers, but the precise reason why the court has justifies “social transformation without representation”, is because the legislatures and public did not protect the rights of an unsympathized population, often because the public at large held discriminatory and often religious beliefs that deprived others of rights as law.

81. Even if we were to say we can use religious theories for secular purposes, the tangible effects on our society having taught these critical theories increase bias⁶⁰, and have been causing declining mental health for the universities,⁶¹ after subsequently studied their effects on people have shown that instead women are now less happy⁶² and Portland has now become the highest rate of divorce in the USA.⁶³

(III) Relief Sought

82. Barber requests an court order prohibiting federally assisted programs under the direction of the the State of Oregon, from favoring or disfavoring the establishment of any policy any unfalsifiable theory pertaining to the state of human nature, human destiny, social transformation, or discriminate based on protect class. He seeks from the Community Relations Service of the Department of Justice,

59 Interview Questions Regarding Diversity.pdf

60 Perceptios of Female Offenders, How Stereotypes and Social Norms Affect Criminal Justice Responses.pdf

61 How Trigger Warnings Are Hurting Mental Health on Campus – JONATHAN HAIDT.pdf

62 Paradox of declining female happiness.pdf

63 Portland Divorce rate.pdf

to negotiate a consent decree with between plaintiff and the State of Oregon towards bringing their federally assisted programs into compliance with federal law.

83. Barber specifically requests a stay of statutes or policies that create employment, education, or contracting opportunities on the basis of any suspect classification, and find a neutral way to achieve a compelling government interest in producing the diversity, inclusion and equity that is required. Programs that are neutral may remove discrimination or barriers, for example offer translation services to persons, or provide childcare services for individuals in state programs, or health related services.

(IV) Legal Principles Applied

(a) Discrimination

The standards for which discrimination is allowed in the laws of the State of Oregon are a strict scrutiny standard due to section 46 “of the *Oregon constitution* ”*Equality of rights under the law shall not be denied or abridged by the State of Oregon or by any political subdivision in this state on account of sex*”. Therefore the the standards for which the federal laws protect educational practices from discrimination are also under strict scrutiny. These means that any government policy needs to have a compelling government interest, be narrowly tailored to fit that compelling government interest, and have the least restrictive means of attaining that government interest. By not providing unequal access to education to men, in the form of advocacy groups as well as specially tailored funds, it reduces the ability of men to advocate for their rights, and institutionally fails to respect their equality.

The HECC relies on its justification of its policies on a matter of disparate impact theory of discrimination against persons based on a statistical disparity, PCC however cherry picks when to apply a disparate impact theory to circumstances that conform to its establishment of “critical theory”. Despite asians or women being over-represented at PCC, they still receive benefits as a result of their gender and race. Because it uses “diversity definitions” that state that “white”, ”males” , “christian” , “heterosexuals” as being a “privileged group members”. Groups which the state uses to form the basis of its policies and procedures, resources, staffing, and behaviors, in its federally assisted funding programs, and also education licensing and programs where they are applied in the classroom.

These are clearly abusive disparate impact theories, because they use the theories as justification for punitive measures, and they refuse to protect the civil rights of people who aren’t in these classified

groups, which is neither narrow tailoring or the least restrictive means. The cultural competency is supposed to mean awareness of cultures, it is not supposed to applying classifications to people, because that stereotyping is what is inherently suspect. The interpretation of the constitutional protections were elaborated upon by The Oregon Supreme Court ruling in *Hewitt v. SAIF* - 294 Or. 33, 653 P.2d 970, regarding state sponsored discrimination benefits as provided on the basis of gender:

“Gender is a visible characteristic determined by causes not within the control of the individual. It bears no relation to ability to contribute to or participate in society. The purposeful historical, legal, economic and political unequal treatment of women is well known. Accordingly, we hold that when classifications are made on the basis of gender, they are, like racial, alienage and nationality, classifications, inherently suspect. The suspicion may be overcome if the reason for the classification reflects specific biological differences between men and women. It is not overcome when other personal characteristics or social roles are assigned to men or women because of their gender and for no other reason. That is exactly the kind of stereotyping which renders the classification suspect in the first place”

The United States Supreme court recognizes the states constitutional authority to ban affirmative action and provide strict scrutiny under constitutional authority under *Schuetz, Attorney General Of Michigan V. Coalition To Defend Affirmative Action, Integration And Immigration Rights And Fight For Equality By Any Means Necessary (BAMN)* 572 U.S. ____ (2014).

“The question concerns whether, and in what manner, voters in the States may choose to prohibit the consideration of such racial preferences. Where States have prohibited race-conscious admissions policies, universities have responded by experimenting “with a wide variety of alternative approaches.” “By approving Proposal 2 and thereby adding §26 to their State Constitution, Michigan voters exercised their privilege to enact laws as a basic exercise of their democratic power, bypassing public officials they deemed not responsive to their concerns about a policy of granting race-based preferences.”

*“This case is not about how the debate about racial preferences should be resolved. It is about who may resolve it. There is no authority in the Constitution of the United States or in this Court’s precedents for the Judiciary to set aside Michigan laws that commit this policy determination to the voters. See *Sailors v. Board of Ed. of County of Kent*, 387 U.S. 105, 109 (1967) (“Save and unless the state, county, or municipal government runs afoul of a federally protected right, it has vast leeway in the management of its internal affairs”).”*

One Such right is the right to be free from discrimination in an educational program in federally assisted programs as per 42 USC 2000(c) and 42 USC 2000(d), and prohibited on the basis of gender under 38 USC 1681 and 10 CFR Part 1042. The rules for applying them are set out in 34 CFR part 100 for race and 34 CFR part 106 for gender. These prohibit any sort of criteria in financial aide, any

sort of recruitment for activities, and it requires comparable facilities provided to each gender. Targeting resources towards individuals on the basis of race and gender are impermissible, and the least restrictive means of stopping discrimination on the basis of race or sex, is to target the specific cause of that disparate impact. For example assistance with child care needs would be a gender neutral way of improving gender participation, whereas requiring all STEM students to take women studies as the HB3308 taskforce suggested would only serve to bias STEM degrees with gender politics.

U.S. Supreme Court had decided in *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 576 U.S. (2015), that disparate impact policies must be limited so that they do not cause a violation of the equal protection clause of the 14th amendment.

*“But disparate-impact liability has always been properly limited in key respects to avoid serious constitutional questions that might arise under the FHA, e.g., if such liability were imposed based solely on a showing of a statistical disparity. A disparate-impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity. A robust causality requirement is important in ensuring that defendants do not resort to the use of racial quotas. Courts must therefore examine with care whether a plaintiff has made out a prima facie showing of disparate impact, and prompt resolution of these cases is important. Policies, whether governmental or private, are not contrary to the disparate-impact requirement unless they are ‘artificial, arbitrary, and unnecessary barriers.’” Griggs, 401 U. S., at 431. Courts should **avoid interpreting disparate-impact liability to be so expansive as to inject racial considerations into every housing decision.** These limitations are also necessary to protect defendants against abusive disparate-impact claims.”*

As Justice Roberts said in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007) "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race." ... "'Racial balancing is not transformed from 'patently unconstitutional' to a compelling state interest simply by relabeling it 'racial diversity.'" Which specifically mentioned the narrowly tailoring exception under the *Grutter v. Bollinger*, 539 U.S. 306 (2003) in "obtaining the educational [intellectual] benefits that flow from a diverse student body."

“As part of its goal of ‘assembling a class that is both exceptionally academically qualified and broadly diverse,’ the Law School seeks to ‘enroll a ‘critical mass’ of minority students.’” Brief for Respondents Bollinger et al. 13. The Law School’s interest is not simply “to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin.” Bakke, 438 U.S., at 307 (opinion of Powell, J.). That would amount to outright racial balancing, which is patently unconstitutional. Ibid.; Freeman v. Pitts, 503 U.S. 467, 494 (1992) (“Racial balance is not to be achieved for its own sake”); Richmond v. J. A. Croson Co., 488 U.S., at 507. Rather, the Law School’s concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce.”

PCC however admits that it applies critical race theory to every board action, policy, behavior, faculty and students can be punished for speech or opinions that are contrary to critical race theory, ones that someone at the university decides they are offensive, “that degrades, denigrates, ridicules” persons on the basis on perceived classes. Except their “whitness history month” speakers proclaim “for peace to exist”... “a world without conflict”...“it would mean be a world without whiteness”.⁶⁴

Instead PCC applies race conscious to every element of the operation of the college which is impermissible, with the purported interest of “underrepresented minorities” which form the basis of a quota system. Jews and Asians are overrepresented in higher education, in addition to suffering from historic discrimination, but they have a different culture and genetics, they should not face collective punishment as unequal treatment. In addition to race the College applies a gender conscious element to its grants for STEM, despite the only real justification being changing women’s social tastes, because women are actually more represented in the college than are men who are underrepresented.

PCC also contends that gender and race are actually a social and not biological construct, thus any differences between groups are a result of society, and therefore justifying the unequal protection under the law. It attempts to redefine the terms racism and sexism, in a way that it excludes any sort of racism that isn’t by white people or males. By defining “whiteness” as social identity it plays the role of straw man in place of “white race”, or “male gender” as a social identity instead of “male sex” as a biological identity. Instead of targeting an immutable characteristic, it is targeting some intangible privilege of of social identity in forms of statistical disparity, and these advantages emerge from being “spared injustice”, which the supposed are the disparate impact that justifies unequal treatment based.

For example the “white privilege unpacking the invisible knapsack”⁶⁵ document used by Oregon HR and its Department of Education starts with: “1. I can if I wish arrange to be in the company of people of my race most of the time.” In 2015 a group of Portland State University students attempted to create a “white student union” group on Facebook, Portland State University then contacted Facebook to have that group removed from Facebook, because it defined them as a “hate group” and “a form of discrimination.”, then finally mentioned its 5 years equity policy that it entered into with HECC⁶⁶.

⁶⁴ PSU White Student Union.pdf

⁶⁵ White Priviledge Unpacking the Invisible Knapsack.pdf

⁶⁶ There's No _White Student Union_ at PSU, Says President Wim Wiewel - Blogtown, PDX - Portland Mercury.pdf

It was a group of Portland State University students against anti-white racism. PSU stated that “College campuses across the country, including Portland State, continue to experience heightened tensions about race and related issues. I want to restate that while PSU embraces academic freedom and free speech, there is no place on our campus for racism or any form of discrimination.”⁶⁷ “PSU also said it sent a cease-and-desist notice to Facebook that the page's use of PSU’s name and logo was illegal.” There already existed a PSU black student union (also using their trademark)⁶⁸, in addition to 14 other multicultural university funded student clubs, but not a single white group in PSU.

When PSU states “We don’t know exactly who’s behind it or who’s promoting it,” said John Fraire, Vice President of Enrollment and Student Affairs. “But I can assure you they are not a recognized student organization, nor would they ever be.” While at the same time recognizing and allowing a black student union to exist, it shows that PSU does not in fact represent the “least restrictive means”, of its “compelling government interest” of stopping discrimination. To the contrary it actively discriminates on the basis of race, and also infringes on the free speech rights of individuals.

This is a departure from the guidelines set out in *Fisher v. University of Texas (2016)* 579 U.S. (2016) because its equity policy extends much further than necessary, into prior restraint of freedom of speech and assembly of students, in a way which is identical to black students as a part of the university. It goes as far as to try to make the claim that a mere mention of PSU violates its trademarks, which the students were clearly using as a form of a collective membership mark, rather than trying to mislead individuals in the commercial goods and services offered by the university.

“The University, however, does have a continuing obligation to satisfy the strict scrutiny burden: by periodically reassessing the admission program’s constitutionality, and efficacy, in light of the school’s experience and the data it has gathered since adopting its admissions plan, and by tailoring its approach to ensure that race plays no greater role than is necessary to meet its compelling interests. Since the University is prohibited from seeking a particular number or quota of minority students, it cannot be faulted for failing to specify the particular level of minority enrollment at which it believes the educational benefits of diversity will be obtained

On the other hand, asserting an interest in the educational benefits of diversity writ large is insufficient. A university’s goals cannot be illusory or amorphous—they must be sufficiently measurable to permit judicial scrutiny of the policies adopted to reach them. The record here reveals that the University articulated concrete and precise goals e.g., ending stereotypes,

67 Portland State Writing Center _ News.pdf

68 Black Student Union PSU - Home _ Facebook.pdf

promoting “cross racial understanding,” preparing students for “an increasingly diverse workforce and society,” and cultivating leaders with “legitimacy in the eyes of the citizenry” that mirror the compelling interest this Court has approved in prior cases. It also gave a “reasoned, principled explanation” for its decision.”

Similar to PCC, Lewis and Clark applies Critical Theory as the foundation of its counseling psychology program, which is in compliance with the Cultural Competency requirements, defined in 2010 by the Oregon Office of Equity and Inclusion (formerly the Office of Multicultural Health and Services). These guidelines include aspects like “oppression” and “privilege” which are derived from critical theory, and unlike the national standards are establishing the appropriate culture rather than requiring the healthcare professionals are understanding and tolerant to culture. The therapy that Barber went to is predominately based on critical theory, as the course syllabus indicates as being its basis⁶⁹

“This course includes an overview of the foundational concepts and approaches in marriage, couple, and family therapy (MCFT). The course emphasizes history and trends in the field along with contemporary research and debates. Students will apply systems, social constructionist, and critical social thought to work within their chosen professional fields. A critical contextual understanding of how intersecting identities/social locations (e.g., race, class, gender, sexual orientation, abilities, nation of origin) and societal/global systems of privilege and oppression shape family well-being is emphasized throughout”

(b) The First Amendment

The State of Oregon does have a place in reducing the discrimination against individuals, and may require that individuals experience a diversity of opinions and cultures, which is a part of the social friction which is integral to social meaning. However it is prohibited from considering what is defined as “culturally competent”, and cannot establish nor force individuals to adopt any opinion, especially those of a political, racial, sexual or political nature as to what is and is not “competent”. The state has no right to define “whiteness” or “gender”, nor can it punish individuals for “offensive” ideas. Ideological litmus tests should not be used as a form of discrimination in higher education, they create a barrier to the the marketplace of ideas, and prevent the freedom of inquiry of diversity of viewpoints

In the 1930s, the Nazi Government began arresting thousands of Jehovah's Witnesses who refused to salute the Nazi flag, and sent them to concentration camps. In the United States, Jehovah's Witness national leaders advocated demonstrating solidarity with German Jehovah's Witnesses by refusing to participate in the daily flag salutes that had become compulsory in American schools.

⁶⁹ CPSY 504-11: INTRODUCTION TO FAMILY THERAPY.pdf

Barnette overruled a 1940 decision on the same issue, *Minersville School District v. Gobitis*, 310 U.S. 586 (also involving the children of Jehovah's Witnesses), in which the Court stated that the proper recourse for dissent was to try to change the school policy democratically. However, in overruling *Gobitis* the Court primarily relied on the Free Speech Clause of the First Amendment rather than the Free Exercise Clause. In 1943, the Court changed its course in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, holding that “the Free Speech clause of the First Amendment prohibits public schools from forcing students to salute the American flag and say the Pledge of Allegiance.”

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us,” said Justice Robert Jackson in his opinion.

As was mentioned regarding the Frankfurt school who founded critical theory, stated Soviets and the Nazi’s were also occupied with social justice as a culture, and used their notions of equality of outcomes as the basis for discrimination against people. These policies violated the notions of equal justice and rights in the law, and forms the basis for the critical social theories that are currently in widespread use in the universities, theories ones that myself and other libertarians oppose as unjust.

“The Nazis advocated a welfare state for German citizens (able Germans of Aryan racial descent) as a means to provide social justice and eliminate social barriers between the German people. The Nazis provided equal access to education for talented children of workers and peasants. Hitler claimed that equality of opportunity for all racially sound German males was the meaning of the "socialism" of National Socialism.”⁷⁰

The Nazis sought to dismantle what they deemed to be an unnatural hierarchy of the middle class and nobility who had allegedly jealously kept their wealth and titles while failing to justify their hierarchical position through their actions in World War I. Even nationalists among them were deemed by the Nazis to have not upheld an appropriate share of contribution to the war effort.⁷¹ Thus the Nazis claimed that only the primordial brutality and willpower of the lower orders could save Germany, and thus justified equality of opportunity as a means to create new capable leaders for German society, and to build a new, "natural" hierarchy based on merit.⁷²“

70 Diemut Majer, Peter Thomas Hill, Edward Vance Humphrey. "Non-Germans" Under the Third Reich: The Nazi Judicial and Administrative System in Germany and Occupied Eastern Europe, with Special Regard to Occupied. Washington, DC, USA: United States Holocaust Memorial Museum, 2003.

71 Gotz Aly, Jefferson Chase. Hitler's Beneficiaries: Plunder, Racial War, and the Nazi Welfare State. New York, New York, USA: Macmillan, 2008, p. 13.

72 MacGregor Knox. Common destiny: dictatorship, foreign policy, and war in Fascist Italy and Nazi Germany. Cambridge, England, UK: Cambridge University Press, 2000, p. 208.

The Supreme court in *Schneiderman v. United States*, 320 U.S. 118, 120 (U.S. 1943), who was a former member of the communist party and a socialist, protected individuals from litmus tests regarding ideologies. The naturalization law which were established by the congress on the basis of a compelling state interest, to protect it from an adversary of the soviet union which it was at the time in the cold war with. "if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought not free thought for those who agree with us but freedom for the thought that we hate."... "so long as they keep the peace and obey the law."

The establishment of an orthodox social theories especially in education, must be coercive impingements on the freedom of conscious and the freedom of thought, and often come at the expense of objective truths. For example the testimony by Kotek that the lack of cultural competency was the reason for the cancer diagnosis, when the higher incidence of cancer is a result of genetic factors and diet, in much the same way that some persons are genetically not gluten or lactose tolerant. However these fly in the face of the definitions which state that "race is a social and not a biological construct", and scientific observation or notions of biological differences are racist or sexist.

My belief in materialism considered "transphobic" by Oregon, which has banned attempts to assist minors and parents in a clinical setting conform to a gender norm,⁷³ but it such approves and funds the "conversion therapy" of minors to some other gender identity. This is despite the fact that Xeno-estrogens and Xeno-androgens⁷⁴, as well as Taxoplasmosis (a very common parasite in humans carried by cats), have a statistically significant influence on sexual behavior.⁷⁵ meaning a physician can be banned for eliminating a parasite, for the purposes of curing homosexual or masochistic behavior.

(c) Establishment Clause

(i) Religion Defined

The Establishment Clause, states that "Congress shall make no law respecting an establishment of religion." however the courts have decided that there are non-thiestic religions, in holding *American Humanist Association v. United States* (D. Or. Oct. 30, 2014) this district court found Secular Humanism a religion stating, "The court finds that Secular Humanism is a religion for Establishment

⁷³ ORS 675.850.pdf

⁷⁴ Sex-specific epigenetic disruption and behavioral changes following low-dose in utero bisphenol A exposure.pdf

⁷⁵ The Relation of Toxoplasma Infection and Sexual Attraction.pdf

Clause purposes”. The forward of Pablo Frier’s “critical pedagogy” describes him as a “radical humanist” and to be a secular “liberation theology”, it along with feminism and other “ism’s” could be found to be a religion under certain tests put forth by the courts even if they are non theistic.

“The Establishment Clause, states that “Congress shall make no law respecting an establishment of religion.” U.S. Const. amend. I. The clause “means at least ‘that [n]either a state nor the Federal Government ... can pass laws which aid one religion, aid all religions, or prefer one religion over another.’” Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d 1114, 1125 (9th Cir. 2013) (quoting Everson v. Board of Education of Ewing Twp. et al., 330 U.S. 1, 15 (1947)). For the purpose of an Establishment Clause violation, “a government policy need not be formal, written, or approved by an official body to qualify as state sponsorship of religion.” Canell v. Lightner, 143 F.3d 1210, 1214 (9th Cir. 1998). Where a governmental law or policy gives a preference to one religion over another, the court must treat that policy as suspect and apply strict scrutiny. Larson v. Valente, 456 U.S. 228, 246 (1982). Such a policy will be presumed unconstitutional unless it is “justified by a compelling governmental interest,” and the policy “is closely fitted to further that interest.”

Moreover, the Ninth Circuit appeal’s to be moving toward the view that the “disparate treatment of theistic and non-theistic religions is as offensive to the Establishment Clause as disparate treatment of theistic religions.” Faith Ctr. Church Evangelistic Ministries v. Glover, 480 F.3d 891, 902 (9th Cir. 2007) (Bybee, J., dissenting). Such a view is consistent with longstanding Supreme Court jurisprudence. In Torcaso v. Watkins, the Supreme Court said that the government must not “aid those religions based on a belief in the existence of God as against those religions founded on different beliefs.” 367 U.S. 488, 495 (1961). Among these latter religions, in a footnote the Court included Secular Humanism. Id. at 495 n. 11. Therefore, the court finds that Secular Humanism is a religion for Establishment Clause purposes and that plaintiffs have alleged sufficient facts to state a claim for relief that is plausible on its face. Iqbal, 556 U.S. at 678.”

A general working definition of religion for Free Exercise purposes is any set of beliefs addressing matters of “ultimate concern” occupying a “ ‘place parallel to that filled by ... God’ in traditionally religious persons.” See *Welsh v. United States*, 398 U.S. 333, 340, 90 S.Ct. 1792, 1796, 26 L.Ed.2d 308 (1970). It is clear upon this courts understanding that for some secular humanists, along with other “ism’s” their belief in it does occupy that place, even devotion to some ideological principle groups can be *Washington Ethical Socy. v. Dist. of Columbia*, 249 F.2d 127, 129 (D.C. Cir. 1957)

“Reference to standard sources of definitions discloses that the terms “religion” and “religious” in ordinary usage are not rigid concepts. Indeed, the definitions in these standard works taken together are by no means free from ambiguity. Some definitions would include only the Christian religion. Some call for belief in and worship of a divine ruling power or recognition of a supernatural power controlling man’s destiny. But also included in these definitions is the idea of “devotion to some principle; strict fidelity or faithfulness; conscientiousness, pious affecting or attachment.”

The courts have tests to determine violations of the establishment clause, "These concepts do not shed that religiosity merely because they are presented as a philosophy or as a science" *Malnak v. Yogi*, 440 F. Supp. 1284 (D.N.J. 1977),

*"The reference to "Secular Humanism" in the Torcaso footnote appears to be to just such a group. See Fellowship of Humanity, supra. A more difficult question would be presented by government propagation of doctrinaire Marxism, either in the schools or elsewhere. Under certain circumstances **Marxism** (emphasis added) might be classifiable as a religion — and an establishment thereof could result.*

Moreover, the establishment clause does not forbid government activity encouraged by the supporters of even the most orthodox of religions if that activity is itself not unconstitutional. The Biblical and clerical endorsement of laws against stealing and murder do not make such laws establishments of religion. Similarly, agitation for social welfare programs by progressive churchmen, even if motivated by the most orthodox of theological reasons, does not make those programs religious.

*The Constitution has not been interpreted to forbid those inspired by religious principle or conscience from participation in this nation's political, social and economic life. See *McDaniel v. Paty*, 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978) (Tennessee constitutional provision restricting clergy from holding political office found unconstitutional).*

*Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with the traditional religions. **Of course, a religion may exist without any of these signs, so they are not determinative, at least by their absence, in resolving a question of definition.** (emphasis added) But they can be helpful in supporting a conclusion of religious status given the important role such ceremonies play in religious life."*

The origins of liberation theology were based on Jesuit theological studies, just as many concepts of feminism were based on the religion theosophy, which worshiped "the divine feminine" form and fertility itself.⁷⁶ Since the sixties of the twentieth century, especially in popular culture, the alleged worship of the mother goddess and the social position that women in prehistoric societies supposedly assumed, were linked. This made the debate a political one. According to the goddess movement, the current male-dominated society should return to the egalitarian matriarchy of earlier times. That this form of society ever existed was supposedly supported by many figurines that were found.⁷⁷

⁷⁶ Divine Feminine: Theosophy and Feminism in England (The Johns Hopkins University Studies in Historical and Political Science) Hardcover – March 9, 2001

⁷⁷ Mother goddess.pdf

But even more so a system that critiques “systematic attempts to discover universal truths through scientific methods and Western oriented logic.” and “ absolute truth identified with virtue and justice” may meet the definition of a religion. Feminist theories have concepts which are in their nature untestable hypothesis, theories like “oppression theory” or “patriarchy” have no method of falsification, and use religious iconography and notions like the (fertility) goddess Venus (♀). Universities in Oregon have places of congregation like women’s centers, and even a feminist museum, which practice several holidays around women’s issues, perform a zealous propagation of their beliefs, and what some might construe canonize of saints and martyrs of their belief system.

There are also churches based on these philosophies, like the National Conference for Community and Justice (NCCJ)⁷⁸ and the The Community of the Love of Christ.⁷⁹

“NCCJ focuses on the multiple manifestations of discrimination and oppression based on religion, race, gender, sexual orientation, economic and social class, age, or physical ability status. Through its programming strategies, research, and public policy initiatives, NCCJ works to transform communities so that they are more whole and just and to promote understanding and respect across groups by preparing and supporting faith, economic opportunity, education, youth, news and advertising media, and government leadership to build inclusive institutions.”

“The Community of the Love of Christ The church became deeply involved in civil rights and antiwar crusades, heralding what would be termed “liberation theology” in the 1970s, articulated a revolutionary Christian theology that emphasized pacifism, freedom from oppression, and civil rights for minorities. Following its own statement of faith that acknowledges Christ as sovereign and liberator, the community is fully committed to a liberation theological praxis that includes a struggle against sexism, heterosexism, racism, classism, imperialism, and violence. It strongly supports and works for Christian gay/lesbian liberation, feminism, racial integration, civil rights, economic mutuality, democracy, universal citizenship, and nonviolence.”

The Supreme Court has used “the Lemon test” from *Lemon v. Kurtzman* 403 U.S. 602 (1971), to define excessive government entanglement with religion, in which the Court struck down a state program providing financial aid to religious elementary and secondary schools. The Court said that for a statute to comply with the Establishment Clause, three things must be true:

“First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion.”

⁷⁸ J. Gordon Melton Meltons Encyclopedia Of American Religions, 8th edition 2009

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The court has elaborated the effect prong and the entanglement prongs of the lemon test violation of the establishment clause. The factors for excessive entanglement are: 1. Character and purpose of institution benefited. 2. Nature of aid the state provides. 3. Resulting relationship between government and religious authority. The effect prong was developed further with the endorsement test as set out in *Lynch v. Donnelly*, 465 U.S. 668 (1984). It States that a government action is invalid if it creates a perception in the mind of a reasonable observer that the government is either endorsing or disapproving of religion. It was also further established in a case of *Agostini v. Felton* 521 U.S. 203 (1997), which identified three primary criteria for determining that government aid has a primary effect of advancing religion if: 1. The aid results in governmental indoctrination 2. The aid program defines its recipients by reference to religion 3. The aid creates an excessive entanglement between government and religion

(ii)The LemonTest

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Legal scholars have criticized CRT on a number of grounds, such as CRT scholars' reliance on narrative and storytelling, or CRT's critique of objectivity. Judge Richard Posner of the United States

Seventh Circuit Court of Appeals has "label[ed] critical race theorists and postmodernists the 'lunatic core' of 'radical legal egalitarianism.'"⁸⁰ He writes,

“What is most arresting about critical race theory is that...it turns its back on the Western tradition of rational inquiry, forswearing analysis for narrative. Rather than marshal logical arguments and empirical data, critical race theorists tell stories — fictional, science-fictional, quasi-fictional, autobiographical, anecdotal—designed to expose the pervasive and debilitating racism of America today. By repudiating reasoned argumentation, the storytellers reinforce stereotypes about the intellectual capacities of nonwhites”

Judge Alex Kozinski of the Ninth Circuit Court of Appeals writes that critical race theorists have constructed a philosophy which makes a valid exchange of ideas between the various disciplines unattainable.⁸¹

“The radical multiculturalists' views raise insuperable barriers to mutual understanding. Consider the "Space Traders" story. How does one have a meaningful dialogue with Derrick Bell? Because his thesis is utterly untestable, one quickly reaches a dead end after either accepting or rejecting his assertion that white Americans would cheerfully sell all blacks to the aliens. The story is also a poke in the eye of American Jews, particularly those who risked life and limb by actively participating in the civil rights protests of the 1960s. Bell clearly implies that this was done out of tawdry self-interest. Perhaps most galling is Bell's insensitivity in making the symbol of Jewish hypocrisy the little girl who perished in the Holocaust—as close to a saint as Jews have. A Jewish professor who invoked the name of Rosa Parks so derisively would be bitterly condemned and rightly so.”

(iii) The Secular Purpose Prong

The U.S. Supreme Court has held that, to withstand challenge under the establishment clause of the First Amendment, a statute “must have a secular legislative purpose” (*Lemon v. Kurtzman*). The Supreme Court has relied on the secular purpose requirement four times to invalidate a state statute. In *Epperson v. Arkansas*, 393 U.S. 97 (1968), the Court struck down an Arkansas statute that prohibited the teaching of evolution in public schools and universities. The absence of a secular purpose was fatal to the law: The overriding fact is that Arkansas’ law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group.

In *Edwards v. Aguillard*, 482 U.S. 578 (1987) invalidated a Louisiana statute that mandated equal treatment for evolution and “creation science” in public schools. Neither theory was required to be taught, but if a teacher presented one theory, he or she had to give equal attention to the other theory.

⁸⁰ Posner-The Skin Trade-The New Republic.pdf

⁸¹ Bending the Law ALEX KOZINSKI.pdf

As in Epperson, the Court noted the “historic and contemporaneous link between the teachings of certain religious denominations and the teaching of evolution.” The legislative history revealed a purpose “to change the science curriculum of public schools in order to provide persuasive advantage to a particular religious doctrine that rejects the factual basis of evolution in its entirety.”

The Establishment clause is violated If state of Oregon mandates a “cultural competency” requirements that require that individuals learn adopt a certain ideology, one that for example which excludes a particular body of science like evolutionary biology or psychology because it conflicts with its doctrine, and when its purpose is to help pick and choose people who receive a benefit based on their race or gender or belief in its Marxist conflict theories. That “Endorsement sends a message to non-adherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.” This is happening according to at University of Oregon surveys of students, where now even vietnamese immigrants who support trump and oppose marxism are called “white supremacists”.

(iv)Effect Prong

The effect prong is to identify when the purpose of legislation is predominately secular, which is often a difficult thing to measure when religion often proposes religious answers to secular answers. Moreover an ideological system can have a set of false set of premises that lead to a true set of conclusions, for example some people would allude that circumcision is done for health benefits when the primary purpose is a religious one. However it is not necessary to excessively entangle religious ideology in the application of secular policy, the secular policy has to infarct be incidental to the religious group, and it can’t be said to be effecting or targeting religion but be incidental to it.

Barber has been effected by his non-belief in the morals of critical theory and feminism, which have less to do with observations of the world, but the decisions about what a person ought to do about them. For example his belief that a man ought to have reproductive choice and the right of abortion or parental responsibilities, and is disadvantaged when the government weighs the interests of women over men. Similarly he does not believe that a difference between men and women need to be eliminated, because they are functionally differently to suit a biological need inherent to our nature.

He also contends that if gender identity is a social construct, then there is nothing that really

separates gender from the metaphysical, or essentially a fantastical mood that one happens self applies (as is someones right). However if the state indicates that it is in fact a biological aspect, and shown to be correlated with toxins and results in physical and psychological harm to the patient, then the state shouldn't prohibit doctors from treating it as a disorder and assist them to conform to biological norms.

(iv)Entanglement Prong

The excessive entanglement is caused by the government institutions that are benefiting the ideology, the aid is provided in such a way that it advances a set of ideologies about race and gender, the ideologies are some prominent that they have now become litmus tests for students and staff. It is these policies that start to take the form of government indoctrination, when it teaches policies that depart from the scientific method and empirical evidence, and equates being competent with believing in a unprovable hypothesis.

In order to be prevent entanglement the aid cannot specifically prevent nor advance religion. Which means that the women studies ought to become the gender studies departments and needs to be unbiased and purely scientific in nature, or in addition to there being a mens or white studies programs equal to that offered to women that cater to their specific cultural needs. Moreover the Women, black and Latino studies programs need to be further secularized, as to not stereotype and indoctrinate students into any ideologies or hierarchies. Rather they should assist with any individualized need that arises from differences in a persons cultural nature, analogously to how disabled students ought to have a supportive environment to learn, but shouldn't be indoctrinated into believing in "able bodied privilege" or that disabled people are being oppressed by the able bodied based on their differences.

Dated: May 12, 2017

/s/



Table of Authorities

- Schneiderman v. United States, 320 U.S. 118, 120 (U.S. 1943)
 Welsh v. United States, 398 U.S. 333, 340, 90 S.Ct. 1792, 1796, 26 L.Ed.2d 308 (1970)
 Washington Ethical Socy. v. Dist. of Columbia, 249 F.2d 127, 129 (D.C. Cir. 1957)
 Malnak v. Yogi, 440 F. Supp. 1284 (D.N.J. 1977)
 Agostini v. Felton 521 U.S. 203 (1997)
 American Humanist Association v. United States (D. Or. Oct. 30, 2014)
 Schneiderman v. United States, 320 U.S. 118, 120 (U.S. 1943)

Texas Department of Housing v. The Inclusive Communities Project, Inc ., 576 U.S. (2015)
 Hewitt v. SAIF - 294 Or. 33, 653 P.2d 970
 Minersville School District v. Gobitis, 310 U.S. 586
 West Virginia State Board of Education v. Barnette, 319 U.S. 624
 Edwards v. Aguillard, 482 U.S. 578 (1987)
 Epperson v. Arkansas, 393 U.S. 97 (1968)
 Lynch v. Donnelly, 465 U.S. 668 (1984)
 Agostini v. Felton 521 U.S. 203 (1997)
 Lemon v. Kurtzman 403 U.S. 602 (1971)
 Fisher v. University of Texas (2016) 579 U.S. (2016)
 Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007)
 Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc ., 576
 U.S. (2015)
 Schuette, Attorney General Of Michigan V. Coalition To Defend Affirmative Action, Integration And
 Immigration Rights And Fight For Equality By Any Means Necessary (BAMN) 572 U.S. ____ (2014).
 Hewitt v. SAIF - 294 Or. 33, 653 P.2d 970

Table of citations

1 HECC-AA-DI-Plan-2017-19-final.pdf
 29 STEM-Education-Plan-Final_CEdO_Nov_2016.pdf
 69 Oregon House kills bill studying cultural competency training for health professionals _
 OregonLive.pdf
 71 Final-CCCEC-Report-only-2013.pdf
 88 culturalcompd.pdf
 107 Office of Equity and Inclusion Cultural Competence Continuing Education (CCCE)_ HB 2611
 (2013).pdf
 109 Culturally Responsive Pedagogy and Practices - Oregon Department of Education.pdf
 111 EducatorEquityReport_CEdO_July_2016.pdf
 239 7.2 b. Rule Text 715-013-0040.pdf
 245 HB3308-Final-Report-Jun-16.pdf
 297 Oregon Local News - Boys still lag behind girls in graduation, and no one talks about it.pdf
 303 dlde-action-plan 2017-2018.pdf
 309 Diversity Definitions _PCC.pdf
 316 Whiteness History Month Discussion PCC.pdf
 418 PCC strategic-plan.pdf
 438 WRC_Advocate_Application.pdf
 442 PCC-NonDiscrimination.pdf
 450 NSF Award Search_Award#1643624 - Mentoring in Manufacturing Technology.pdf
 452 Power and control wheel.pdf
 454 Positive and Negative Liberty (Stanford Encyclopedia of Philosophy).pdf
 538 Teresa McDowell Applying Critical Social Theories to Family Therapy Practice.pdf
 548 Dutton-D.G.-Corvo-K.-2007-The-Duluth-Program_-A-flawed-and-data-impervious-
 paradigm.pdf
 566 follingstad abuse men vs women.pdf
 567 Unsettling whiteness Lewis and Clark.pdf
 568 Liberation based healing sponsors.pdf
 573 Conflict theories.pdf

578 Cultural hegemony.pdf
 584 Critical Pedagogy.pdf
 592 Cultural responsive EOU.pdf
 600 Critical Race Theory.pdf
 609 On The Jewish Question by Karl Marx
 630 Völkisch equality.pdf
 632 Men and Women evo psychology.pdf
 641 Critical Theory.pdf
 649 gramsci-reader.pdf
 884 Horkheimer Max Adorno Theodor Dialectic of Enlightenment Philosophical Fragments.pdf
 1189 Karpman drama triangle.pdf
 1195 Social Justice United Nations.pdf
 1352 HB3308-Final-Report-Jun-16.pdf
 1404 Community College Programs for Men.pdf
 1444 The “Whiteness” Name Reveals a Major Problem _ The Bridge.pdf
 1446 Psychotherapy_Networker_Cultural_Equity-libre.pdf
 1492 Teresa McDowell Applying Critical Social Theories to Family Therapy Practice.pdf
 1576 Rational emotive behavior therapy.pdf
 1584 Beahrs Traumatophobia: Paradoxical Amplification of Posttraumatic Symptoms, and the Role of Third Parties .pdf
 1602 Coming in From the Cold_ Liberation Psychology for Counselors and Educators - Continuing Education - Graduate School of Education and Counseling - Lewis & Clark.pdf
 1604 Liberation psychology.pdf
 1610 pedagogy of the oppressed.pdf
 1792 womens studies as a virus.pdf
 1823 Postmodern Glacier professor defends his dreadful study as “misunderstood”. It wasn’t.pdf
 1830 Feminist Glaciology.pdf
 1854 Nondiscrimination & Non-harassment Policy _ PCC.pdf
 1861 Whiteness History Month Discussion PCC.pdf
 1963 The “Whiteness” Name Reveals a Major Problem _ The Bridge.pdf
 1965 DiversityStatements_Rev16Mar17.pdf
 1980 Interview Questions Regarding Diversity.pdf
 1984 Perceptios of Female Offenders, How Stereotypes and Social Norms Affect Criminal Justice Responses.pdf
 2186 How Trigger Warnings Are Hurting Mental Health on Campus – JONATHAN HAIDT.pdf
 2209 Mother goddess.pdf
 2215 Paradox of declining female happiness.pdf
 2263 Portland Divorce rate.pdf
 2264 PSU White Student Union.pdf
 2273 White Priviledge Unpacking the Invisible Knapsack.pdf
 2275 There's No _White Student Union_ at PSU, Says President Wim Wiewel - Blogtown, PDX - Portland Mercury.pdf
 2277 Portland State Writing Center _ News.pdf
 2278 CPSY 504-11: INTRODUCTION TO FAMILY THERAPY.pdf
 2276 ORS 675.850.pdf
 2278 Posner-The Skin Trade-The New Republic.pdf
 2282 Bending the Law ALEX KOZINSKI.pdf